IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 48 of 2005

Decided on: 11.10.2007

Rumi Ram **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellant : Ms. Yogita Dutta, Advocate.

For the respondent : Mr. D.S. Nainta, Dy. Advocate General.

Surjit Singh, Judge (Oral)

Appellant is aggrieved by the judgment of the trial Court, whereby he has been convicted of an offence punishable under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo imprisonment for a further period of one year.

2. First, the prosecution version may be noticed. On 12.12.2003, a police party headed by HC Hans Raj (PW-3), was present at a place called Parihar in connection with routine traffic checking. Around 4.30 PM when the documents of scooter of PW-1 Piar Singh were being checked, appellant was seen coming from dam side along a village path. On seeing the police, the appellant turned about and tried to escape. This aroused the suspicion of PW-3 Hans Raj, Head Constable. He alongwith some other police officials

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Whether reporters of the local papers may be allowed to see the judgment?

ran after the appellant and overpowered him at a distance of 50-60 yards and recovered *Charas* from him, which was contained in a plastic bag. The plastic bag containing *Charas* was brought to the site where checking of the vehicles and the documents was going on. PW-1 Piar Singh was told by PW-3 HC Hans Raj that a bag containing *Charas* had been recovered from the appellant. *Charas* was weighed. It was found to be 2.050 Kgs. Two samples, each weighing 25 grams, were separated. Further investigation of the case was handed over to PW-4 Jog Raj, ASI, who happened to reach the place sometime after 6 PM. Custody of the accused was handed over to said Jog Raj. Three parcels containing the bulk *Charas* and the samples made by PW-3 HC Hans Raj and sealed with seal "T", were also handed over to him. Jog Raj resealed all the three samples with his own seal which produced the impression "J". PW-4 Jog Raj later on deposited the case property with PW-5 Rajinder Singh, MHC, who sent one of the two samples to the Chemical Laboratory through PW-6 Shiv Kumar, Constable. Examiner of the laboratory reported that the sample contained resin to the extent of 26.11% and beam's alkaline test was also found positive and hence, the sample had contents of *"Charas"*.

3. Trial Court has held the appellant guilty of possessing 2.050 Kgs. of *Charas*. Appellant is aggrieved by his conviction and sentence.

4. Learned counsel representing the appellant has made threefold submission. Her first submission is that the search was not conducted in the presence of PW-1 Piar Singh, but still he has been cited as a witness of search and seizure and his signatures were also obtained on the search and seizure memo. Ext.PW1/B. It is true that search was conducted at the site where the appellant was

overpowered by PW-3 Hans Raj and PW-1 Piar Singh was not present when the search was conducted, but both PW-1 Piar Singh and PW-3 Hans Raj have made no secret of this fact. Both of them have come out with the truth and testified that the search was conducted at the site where the appellant was overpowered and *Charas* was recovered from him. We find no contradiction at all in their testimony on this point. Also, we see no infirmity or inherent defect in the testimony of PW-3 Hans Raj indicating that the same is not correct. No suggestion was put to the witness that the *Charas* was planted by him. Also no suggestion was put to PW-1 Piar Singh that PW-3 Hans Raj was carrying anything with him, muchless the polythene bag containing *Charas,* when he chased the appellant. Appellant also does not plead in his statement, under Section 313 Cr. P.C., that the *Charas* was planted by PW-3 Hans Raj. Therefore, there should be no reason to disbelieve the prosecution version that the polythene bag containing *Charas* was recovered from the appellant.

5. Next submission made by the learned counsel is that PW-1 Piar Singh failed to identify the second part of the sample Ext. P-2 which was produced in the Court in the form of a sealed parcel and, therefore, it was doubtful if the report of the Chemical Examiner Ext.PW3/B pertained to the stuff allegedly recovered from the appellant. It is true that PW-1 Piar Singh stated that he was unable to say whether the sample shown to him was one of the two which were prepared on the spot, but PW-3 Hans Raj very categorically stated that it was the same and no cross-examination was directed qua this part of his testimony and in the absence of cross-examination, there should be no reason to disbelieve the same.

6. Next submission is that the *Charas* contained in the sample was only 26.11% and, therefore, the total quantity of *Charas* recovered from the appellant is required to be worked out at the rate of 26.11%, because it is the resin part of cannabis plant, which is *Charas* within the meaning of Section 2((iii)(a) of the Narcotic Drugs and Psychotropic Substances Act, as held by this Court in ***Dharam Pal*** *Vs*. ***State of H.P***., ***Latest HLJ 2007 (HP) 827***, A Division Bench of this Court in Dharam Pal's case (supra) has held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

7. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 2.050 Kgs. The Chemical Examiner has found resin content in it to the extent of 26.11%. That means the *Charas*/resin content in the recovered stuff was 535 grams. This quantity is less than the commercial quantity, as specified vide Notification No.S.O.1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished not under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, as done by the trial Court, but under Section 20(B) of the said Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin/*Charas* found

in the stuff recovered from the appellant, we feel that the ends of justice would be met in case his sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to four years rigorous imprisonment and a fine of Rs.20,000/-; in default of payment of fine simple imprisonment for a further period of six months. We order accordingly. Revised warrant of sentence shall be issued to the Incharge of the jail concerned by the Registry of this Court.

8. Appeal is partly accepted in terms of the aforesaid order and disposed of accordingly.

(Surjit Singh), J

October 11, 2007(ss) **(Surinder Singh), J**